



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Number: **201330043**  
Release Date: 7/26/2013

Date: **May 1, 2013**

UIL: 501.32-00; 501.32-01; 501.33-00; 512.06-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for a group ruling for your subordinates. Recently, we sent you a letter in response to your application. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for a group ruling for your subordinates, donors may not deduct contributions to your subordinates under Code section 170. Your subordinates must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless your subordinates request an extension of time to file. Or, your subordinates may individually apply for exemption.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038(CG) (11-2005)  
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: March 8, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL:

501.32-00

501.32-01

501.33-00

512.06-00

**LEGEND**

B = Non-Profit Organization

C = For-Profit Business

D = Program Activity

E = Subordinate A

F = Program Activity

J = Date 1

K = Date 2

L = Date 3

M = Date 4

N = Date 5

P = President.

\$x = \$dollar amount

\$y = \$dollar amount

\$z = \$dollar amount

Dear

We have considered your request for a group ruling for your subordinates pursuant to the provisions of Revenue Procedure 80-27, 1980-1 C.B. 677. Based on the information provided, we have concluded that you do not qualify for a group ruling under section 501(c)(3) of the Internal Revenue Code. The basis for our conclusion is set forth below.

**Issues**

- Is it in the interest of sound tax administration to approve your request for a group ruling? No, for the reasons described below.

Letter 4036(CG) (11-2011)

Catalog Number 47630W

## **Facts**

You received recognition of exemption under section 501(c)(3). You were organized to “promote support for and provide assistance to active duty U.S. troops and their families post September 11<sup>th</sup>”. Your amended articles of incorporation state that you were organized:

*“exclusively for the charitable purposes of (a) obtaining authorization from any state official, agency, or department of any state within the United States of America, its territories or possessions for the purpose of procuring the issuance of a specialty motor vehicle license plate for which an annual fee is charged or to be charged, (b) general solicitation of contributions from the public, and (c) conducting all business in the administration of the aforesaid and the management and distribution of the funds and proceeds generated therefrom, with all of the aforesaid being for the ultimate benefit of the spouse, children and dependents of (1) members of the armed forces...”*

You requested a group exemption ruling letter for your subordinates on J. You were issued a declination letter on K. The IRS declined to rule on your group ruling request noting that you appeared to have substantial legislative activities, as well as a large professional fundraising program, involving royalty type donations. The declination further noted that professional fundraising programs have shown to be problematic with consistency and compliance when organizations have activities with high compliance issues. They are not good candidates for group exemptions. These organizations are better qualified for individual rulings so proper consistency and compliance is attainable. Your individual exemption under section 501(c)(3) remained in effect. You requested another group ruling determination on L. The facts presented here are from the L request.

Your group exemption request included 26 subordinate organizations with each subordinate, except for one, representing a state within the United States. You stated that you and the subordinates “*form an integrated network of organizations to provide efficient and effective assistance to active U.S. troops and their families*”. You maintain the five programs summarized below.

- **License Plate Program:** provides for the issuance of official state-issued specialty license plates bearing a specific slogan in each of the 50 states. You describe these as official state-issued license plates for motor vehicles and you have obtained approval for the sale of the license plates in 26 states as of the group ruling request date. Each state creates the license plates which include your slogan and makes the plates available for an additional fee through its Department of Motor Vehicles for its customers to purchase. The state DMV collects the fee, and part of the purchase price goes to your subordinate organization in that state as the designated recipient of your share of the funds collected from the sale of license plates bearing your slogan. You consider it a fundraiser and say “it enables the central organization and subordinates to raise financial support to fund their programs.” You give an example of a state where each license plate costs an individual in that state \$60, of which \$45 goes to the subordinate organization and \$15 goes to that state’s Department of Motor Vehicles. In the materials you submitted, the license plate program is described as your “flagship” program.
- **Popcorn Sales Program:** carried out through you as the central organization, B, a non-profit organization and C, a for-profit enterprise. The purpose of this program is to collect popcorn, purchased from B, for donation to the military. B asks individuals to purchase C popcorn during its annual popcorn fundraiser. You manage the relationship involving B, C, the military, and the

shipping of the popcorn. You stated that your subordinates provide information to you about local needs and events where popcorn can be sold or distributed. You provided a press release describing the popcorn sales program. The press release stated that you transported popcorn from C's facilities to another location where it was loaded onto a Navy ship. Therefore, it appears that your role was limited to arranging for transportation of the popcorn. You do not actually deliver the popcorn to troops abroad. Your subordinates merely provide information regarding local popcorn sales opportunities.

- D: a database that provides a way for donors to connect with charities that provide support to troops. The database is maintained by you, and your subordinates provide information about charitable organizations at the state level and names of organizations they feel should go into the database from their state.
- F: a platform or program within your website that provides interpersonal connections and interactions on your website among individuals regarding the troops and their families. You, and one of your subordinate organizations, which developed this platform, maintain the website. Everyone who purchases a license plate is automatically a non-voting member. Members can set up their own web pages to promote a rally or post and exchange news about the troops, and advertise fundraising events.
- Care goods program: this program ships individual boxes to individual soldiers and larger boxes for entire units. You collect donated goods such as personal care items, candy, and sunscreen and ship them in cargo containers with the popcorn donation. You state that the subordinates are responsible for obtaining shipping addresses for troops deployed from their states and organizing local events where individuals can bring donated care goods and put together care boxes to be shipped to the soldiers.

Article VI of your Articles of Incorporation states the directors shall be elected by the members and that the corporation will be managed by officers under the direction of the board of directors. The number of directors may be increased or decreased by the members as provided in the By-Laws.

You identify four individuals as your initial directors. The initial directors of each subordinate include P, your president, and one other of your directors.

Your By-laws state that any or all of the directors may be removed with or without cause by a unanimous vote of the membership or by a vote of \_\_\_\_\_ of the directors at a special meeting called for that purpose. However, P, your president, may not be removed and shall have a lifetime seat as Chairman of the Board until his death or voluntary resignation.

Article XI of your Articles of Incorporation contains an acknowledgement that the corporation recognizes that:

*[ the] corporation, the charitable purposes and business concept behind it, were ideas of President. Without him this corporation would not have come into existence and without him what comes out of it would not be. As Founder, he is the man principally undertaking the creation and organization of all aspects of the building of this charitable enterprise, and the primary thought and labor in its creation and the launching of its enterprises and structures will in large part come from him and be driven by his thoughts, labor, and ingenuity.*

In response to a request to explain the number of members in the subordinate organizations and how someone may become a member, you stated that the subordinates do not have members and that volunteers are used to carry out the activities.

You state that subordinate organizations are required to adopt uniform Articles of Incorporation and By-Laws which have been developed and approved by you. Each subordinate also is required to follow a subordinate organization operating guideline. The uniform By-laws of the subordinates state that *"membership shall comprise of only one member which is [you], which shall exclusively, irrevocably and forever hold all voting rights and power"*.

You provided information for each subordinate including name, address, EIN, filed articles of incorporation and any amendments, and the names and positions of the officers. Each subordinate has three officers, two of which are typically P and his attorney (one subordinate has four officers, but is still at least controlled by P and his attorney).

In correspondence dated M, you were asked to explain the activities of the subordinates in more detail. You stated that the subordinates carry out their charitable purposes by boosting morale from distributing in-kind donations from the public and providing financial assistance to needy U.S. troops and their families. You described the in-kind donation program as consisting of the subordinates working with local stores to collect in-kind donations from customers at the checkout registers that your subordinates will inspect, repackage, and ship to the troops. You described in-kind donations as food products and personal items, including hygiene products and CDs. You also explained that subordinates have made monetary grants to other tax-exempt charities that operate emergency relief funds for the troops and their families. Another activity you described as carried out by your subordinates is organizing events for the troops and their families to address their mental well-being. You gave as an example a soldiers' night event at a baseball game. The activity consisted of arranging for the troops and their families to attend a baseball game for free and to receive free popcorn. This activity appears to have occurred just one time.

You supplied the sections and the law of three different state codes outlining the requirements under each code. The code you provided describes the specialty license plate and the fee that is charged to the individual, the fee that is retained by the Department of Motor Vehicles, and the fee that would be given to the subordinate. Each state collects the total fee and deposits the part of the fee that is given to the subordinate in special funds established in the subordinate's name. The subordinates are an integral part of the license plate program and participate in implementing the program at the state level. The state programs require the subordinates to be tax-exempt organizations. You also explained that many subordinates have been approved to participate in their states' state employees charitable campaigns once the group exemption is approved.

Additionally, you were asked to provide the amount of monetary assistance that each subordinate has received and to explain where the material and funds were obtained. You replied that the subordinates have received very little monetary contributions, and you provided a chart that has an overview of the donors who make in-kind contributions to the subordinates. You also stated that because the subordinate's tax-exempt status is pending, the central organization receives contributions on behalf of the subordinates.

When questioned about how the subordinates pay for their expenses since contributions are in the form of non-monetary assistance, you stated that the central organization provides the monetary support to the

subordinates and that some subordinates receive funding from the central organization through the license plate program.

There also was a question about the activities of one of the subordinates, E. The activities consisted of maintaining a database program of the individuals who had purchased your specialty license plate. The subordinate also carries on the activity that is explained above as the F, an internet platform providing opportunities for interpersonal connection and communication through your website. You called the contributors to F automatic non-voting members of the organization. Only expenses were shown for this subordinate; no revenue. You explained the central organization absorbed the expenses of the subordinate. You have subsequently removed this subordinate from the group ruling request and stated that the central organization would conduct the activity.

In a later correspondence dated N, you were asked about the chart that you supplied in your previous response that showed an overview of in-kind donations that had been received by each of the subordinates. The chart showed very few donations received by a number of the subordinates. You were asked to provide a breakdown of the donations received, whether monetary or in-kind donations. In your response, you provided the breakdown and stated that the subordinates may appear to be receiving contributions from a few donors but they are actually receiving contributions from a large base of donors. You stated that the popcorn is donated by individuals who purchase it from B, who acquires it from the for-profit company, C.

In addition, you provided a Form 990 as part of the group ruling request. Information gleaned from this Form 990 supplements the description of your activities and operations. Form 990 data shows that approximately % of your revenues are in the form of donated popcorn. Based on the information in your Form 990, you had an inventory of popcorn valued at more than \$ , but shipped less than \$ worth of popcorn to overseas military bases that year. In other words, only a fraction of the donated popcorn, acquired from C, was actually shipped to troops, while most of your popcorn inventory remained indefinitely in storage.

The Form 990 identifies three individuals as your directors, two of whom are related. These two are your president, P, who has life tenure on the governing body, and P's father-in-law.

Schedule C of Form 990 indicates you had direct contact with legislators, their staffs, government officials, or a legislative body.

Schedule J shows P as President/Director with compensation of \$w for the business use of personal residence and deferred compensation of \$x. You awarded P a bonus payment of \$y for prior year results. You also awarded P an annual contract compensation of \$z. P may defer receipt of payment until the organization is in a position to provide payment without affecting the growth of the organization.

Schedule O explains the loans from interested persons. You entered into private loan agreements with directors, trustees, and other individuals with ties to the organization. The loans had interest rates ranging from % to %. The payable balance is not scheduled to be repaid during the following fiscal year and is listed in long term liabilities.

Schedule R-1 lists the subordinate organizations and indicates the exempt foundation code section requested is 509(a)(3).

**Law**

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of its net earnings inures to the benefit of any private shareholder or individual and no substantial part of the activities of which are attempting to influence legislation.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) defines the words "private shareholder or individual" in section 501 to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations requires an applicant organization to establish that it serves a public rather than a private interest and specifically that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 512(a)(1) defines the term "unrelated business taxable income" as the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less the allowable deductions which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in section 512(b).

Section 1.513-1(d)(3) of the regulations provides that in determining whether activities contribute importantly to the accomplishment of an exempt purpose, the size and extent of the activities involved must be considered in relation to the nature and extent of the exempt function which they purport to serve. Thus, where income is realized by an exempt organization from activities which are in part related to the performance of its exempt functions, but which are conducted on a larger scale than is reasonably necessary for performance of such functions, the gross income attributable to that portion of the activities in excess of the needs of exempt functions constitutes gross income from the conduct of unrelated trade or business. Such income is not derived from the production or distribution of goods or the performance of services which contribute importantly to the accomplishment of any exempt purpose of the organization.

Rev. Rul. 78-84, 1978-1 C.B. 150, describes a color guard formed by community citizens to promote civic pride, the state, and the country by conducting flag-raising and other ceremonies at patriotic and community functions. The ruling held that the organization promoted patriotism and qualified for exemption under section 501(c)(3) of the Code.



Rev. Proc. 80-27, 1980-1 C.B. 677, provides the procedures for requesting a group ruling. Detailed descriptions of the subordinate organizations should include among information submitted:

(a) information verifying the existence of the relationships required by section 4.02; (b) a sample copy of a uniform governing instrument (charter, trust indenture, articles of association, etc.) adopted by the subordinates; or, in the absence of a uniform governing instrument, copies of representative instruments; (c) a detailed description of the purposes and activities of the subordinates including the sources of receipts and the nature of expenditures; (d) an affirmation that, to the best of the officer's knowledge, the purposes and activities of the subordinates are as set forth in (b) and (c) above; (e) a statement that each subordinate to be included in the group exemption letter has furnished written authorization to the central organization as described in section 4.03; (f) a list of subordinates to be included in the group exemption letter to which the Service has issued an outstanding ruling or determination letter relating to exemption;

Rev. Proc. 2013-9, 2013-2 I.R.B., sect. 4.03(2),(3), requires an applicant to submit sufficient information during the application process for the IRS to conclude that the organization is in compliance with the organizational and operational requirements of section 501(c)(3) before it issues a ruling. The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the IRS that it qualifies for exemption pursuant to the section of the Code under which exemption is claimed, the IRS will generally issue a proposed adverse determination letter or ruling.

In *Better Business Bureau of Washington D.C., Inc. v. United States*, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In *Mabee Petroleum Corporation v. U.S.*, 203 F.2d 872 (5th Cir. 1953), the court held that a \$100,000 salary paid to the founder of the charitable organization was unreasonable compensation and therefore inurement. In deciding that the salary was unreasonable, the court noted that he devoted only a small part of his time to the organization, that he had previously served as president of the predecessor organization without salary, that the gift of his stock was encumbered by the obligation to pay the annual salary for 15 years, that comparable services from an outside source through an arms-length transaction would probably have been available at a lower cost, and that the long term of the contract without consideration of changes in the business or in economic conditions indicated that it was unrelated to services performed. The underlying premise (reasonable salaries do not constitute inurement, while excessive or unreasonable salaries do constitute inurement of corporate net earnings) was thought to be "too well settled to require citation of authority."

In *Birmingham Business College v. Commissioner*, 276 F.2d 476 (5th Cir. 1960), the court affirmed revocation of exempt status of the school, based in part on the inurement of its earnings through salaries, loans and draws against future earnings to the three shareholders who were also employees.

In *B.S.W. Group, Inc. v. Commissioner*, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its

primary purpose was not charitable, educational, nor scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical 501(c)(3) organization. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

The petitioner in *est of Hawaii v. Commissioner*, 71 T.C. 1067 (1979), conducted training, seminars and lectures in the area of intrapersonal awareness. Such activities were conducted under licensing arrangements with various for-profit corporations. The licensing agreements were conditioned on the petitioner maintaining tax exempt status. The petitioner argued that it had no commercial purpose of its own and that its payments to the for-profits were just ordinary and necessary business expenses. The Court did not agree with the petitioner citing that the operational test (see section 1.501(c)(3)-1(c)(1) of the regulations) focuses on the purpose rather than nature of an organization's activities. An organization that serves a private interest other than incidentally is not entitled to exemption under section 501(c)(3). Thus, although an organization's operations may be deemed to be beneficial to the public, if it also serves private interests other than incidentally it is not entitled to exemption. The Court concluded that the petitioner is not exempt under section 501(c)(3) of the Code because the petitioner served a substantial private and commercial purpose rather than an exempt purpose.

### Analysis

Based on the information you submitted, and for the reasons explained below, it is not in the interest of sound tax administration to approve your request for a group ruling because you have failed to clearly establish qualification for exemption for your subordinates, as required in Rev. Proc. 2013-9.

#### *Failure to Establish*

You have failed to show subordinates meet the operational test and failed to show operations of the subordinates will not result in inurement to P or other insiders or more than insubstantial private benefit to C or similar for-profit companies. The information you submitted does not clearly delineate the activities you perform and the activities that are performed by your subordinates. You have not clearly stated whether you perform all the state license plate activities and popcorn fundraising and distribution, or the extent to which your subordinates have some part in these activities, other than creating a state presence. The activities that you attribute to your subordinates could just as easily be attributed to you. See *est of Hawaii v. Commissioner*, 71 T.C. 1067 (1979). In your responses to questions about your operations, as well as in the Form 990 you provided, your subordinates are treated as disregarded entities when convenient. Your primary activity appears to be fundraising through the popcorn sales program and the state license plate program, which also provide your main source of income. It is not clear your subordinates are operated exclusively for one or more tax exempt purposes as required by section 501(c)(3) of the Code and section 1.501(c)(3)-1(c)(1) of the regulations.

The description of the purposes and activities of your subordinates does not meet the requirements of Rev. Proc. 80-27. Although you claim that popcorn donations were made to the subordinates, the online order form for popcorn lists you as the sponsoring organization, and includes your Combined Federal Campaign number. There is no indication that a popcorn donation might be processed through a state subordinate or even that a donor would be aware of any involvement by a subordinate. Your website

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states that you are but makes no mention  
of a state subordinate's involvement in this transaction. There is no indication that the subordinates maintain corporate formalities, such as Board meetings. Unlike the organization described in Rev. Rul. 78-84, *supra*, which performed activities that promoted patriotism; your subordinates were formed only to permit you to conduct your license plate program in various states. Based on the foregoing, the license plate and popcorn activities are all your activities and the subordinates exist only to give you a state presence to conduct these fundraising activities. Accordingly, you have failed to clearly establish qualification of exemption for your subordinates.

#### *Operational Test*

Organizations described in section 501(c)(3) of the Code must be organized and operated exclusively for one or more exempt purposes specified in the regulations, which include charitable or educational purposes. *See* section 1.501(c)(3)-1(a)(1) of the regulations.

To be operated exclusively for one or more exempt purposes, an organization must engage primarily in activities that accomplish one or more exempt purposes. However, if more than an insubstantial part of the organization's activities is not in furtherance of an exempt purpose, it is not engaged primarily in activities that accomplish an exempt purpose. *See* section 1.501(c)(3)-1(c)(1) of the regulations.

You describe your license plate program as your "flagship" program, indicating that it is the primary activity of your organization. Your subordinates' role in the license plate program is limited to providing a state presence and a possible recipient of funds from you. The individual state presence also facilitates lobbying individual state legislatures. This is a fundraising activity and does not constitute an exempt activity in itself. You also sell popcorn from C, a for-profit company through sales by the non-profit organization, B and through B's website. The reason you sell the popcorn is ostensibly so that members of the public can purchase popcorn for deployed troops. However, this is yet another fundraising activity that does not constitute an exempt activity in itself. Your subordinates merely provide to you information regarding local popcorn sales. No clearly defined exempt activity has been described as the subordinate organizations' primary activity.

Even if your subordinates fundraise as a primary activity, that alone will not satisfy the operational test. As in *B.S.W. Group, Inc. v. Commissioner*, 70 T.C. 352 (1978), we must conclude that the activities of your subordinates are of the sort ordinarily carried on by commercial ventures organized for profit because you have failed to show otherwise. You have failed to show subordinates meet the operational test.

#### *Inurement and Private Benefit*

In addition to the fact that the subordinates do not appear to have exempt activities, several facts suggest that there may be inurement of the net earnings of the subordinates to P, the founder and President, and to various other insiders. Inurement to such individuals is prohibited under section 1.501(c)(3)-1(c)(2) of the regulations. For example, P is entitled to deferred compensation that is disproportionate. You also awarded him a large bonus in a year for that year's results, as well as a large compensation contract. Such extraordinary compensation that is not dependent on performance suggests inurement of income as illustrated by the formal opinions in the court decisions in *Mabee Petroleum Corporation v. U.S.*, 203 F.2d 872 (5<sup>th</sup> Cir. 1953); and *Birmingham Business College v. Commissioner*, 276 F.2d 476 (5<sup>th</sup> Cir. 1960). The provision in your subordinates' respective articles of incorporation that acknowledges P's "thoughts, labor and ingenuity," as well as the composition of your subordinates' boards, lack of Members, and rules

for changing board control, suggests that the subordinates are structurally under his control. They appear to be operated for his benefit. He, unlike other directors, cannot be removed and has a lifetime seat as Chairman. He also is related to at least one other member of your governing body. Each subordinate has three officers, two of which are typically P and his attorney. One subordinate has four officers, but is still at least controlled by P and his attorney. There are also private loan agreements between the organization and various insiders for significant amounts. You and your subordinates are controlled by the same small group of individuals, including your President and a small number of other individuals. You listed salaries for employees of each state subordinate. However, since these subordinates are controlled by the same small group of individuals, these salaries are being paid primarily or exclusively to those individuals, including P.

Also, you, through your subordinates appear to provide private benefit to C, the for-profit business. The popcorn is purchased exclusively from C. There is no indication that the popcorn company sells the popcorn at or below cost. The significant popcorn purchases provide the company with substantial private benefit. This is inconsistent with section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Although your subordinates are organized to promote support for and provide assistance to active duty U.S. troops and their families, your subordinates' activities in this regard are minimal, at best. As noted in *est of Hawaii v. Commissioner*, 71 T.C. 1067 (1979) even when an organization's operations may be deemed to be beneficial to the public, if it also serves private interests other than incidentally it is not entitled to exemption. Your subordinates are primarily performing fundraising activities, the funds of which do not exclusively benefit the troops, but rather also benefit your founder, a small group of insiders, and a for-profit company. The role of your subordinates in your various programs is not clear but appears to merely provide you with a presence in several states or venues to expand sales.

#### *More than Insubstantial Non-Exempt Purpose*

The state license plate program in which your subordinates expect to participate as a fundraising activity cannot be regarded as exempt activities, because "fundraising" is not itself a charitable activity or an exempt purpose. *Better Business Bureau of Washington D.C., Inc. v. United States*, 326 U.S. 279 (1945) held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. Furthermore, once the subordinates participate in the state license plate programs, they will generally receive income from a regularly carried on trade or business. Even if proceeds from this activity are ultimately not taxable as unrelated business income, (as defined in IRC section 512(a)(1), it remains a non-charitable activity. Additionally, in order to participate in state license plate programs, the subordinates must lobby state legislatures. You have indicated (schedule C of Form 990) you have had direct contact with legislators, their staffs, government officials or a legislative body. Your subordinates will perform the lobbying. Because the license plate programs would likely be the subordinates' primary activity, it is possible that just the lobbying activity, itself, would be a substantial part of the subordinates' activities.

Even if the popcorn donations are processed through the state subordinates, this activity is not an inherently charitable activity. The only charitable part of this activity is if popcorn is distributed to the troops. However, there is no evidence to establish that the popcorn donations are actually being distributed by those subordinates to the troops. While it appears that individuals are purchasing significant amounts of popcorn for the troops, it is not clear that a corresponding amount of popcorn is being distributed to the troops. You cited only one instance where families of troops were given popcorn during a baseball game. Instead, the information submitted suggests that significant stockpiles of popcorn

are warehoused, and it is unclear how much of it is actually distributed to troops. If a charitable activity is conducted on a scale that is larger than necessary, then the portion that is in excess of what is necessary is not charitable as indicated in section 1.513-1(d)(3) of the regulations. In fact, the information on your Form 990 as well as other facts suggest that most of the popcorn is wasted. Additionally, in the few instances that popcorn is actually distributed to troops, your involvement is rather limited. You may transport popcorn from a warehouse to a carrier within the U.S., but the bulk of the transport and delivery is conducted by others. Accordingly, it stands to reason any involvement of your subordinates in the distribution of popcorn will likewise be limited. In addition, you were unable to clearly show insiders, such as P, or for-profit companies, such as C, will not benefit.

### **Conclusion**

You have failed to establish that your subordinates' activities are primarily "charitable" within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations, and have failed to establish that your subordinates are not organized or operated for the benefit of private interests.

Accordingly, it is not in the interest of sound tax administration to approve your request for a group ruling.

Each subordinate may, however, file for tax-exempt status on its own by filing Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, or Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, and paying the appropriate user fee.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892. These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are

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true, correct, and complete.”

Your appeal will be considered incomplete without this statement.

If an organization’s representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service  
EO Determinations Quality Assurance

Deliver to:

Internal Revenue Service  
EO Determinations Quality Assurance

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

We sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure, Publication 892

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